

MT LEGISLATIVE HISTORY

Chapter 328 1974

Bill (H) 297 S _____

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Jan 22 ☒ C

Hearing Date(s) Mar 04 ☒ C

Feb 16 ☒ C

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Date Out Feb 16 ☒ C

Mar 04 ☒ C

Did this bill originate in an interim committee? Yes No

Committee

Report

42nd Legislative Assembly
2nd Session

Bill No.	Subject Matter	Date In	Hearing Date	Comments	Date Out	Committee Action	Final Action
HB 773	Repealing section 4-357, RCM relating to annual reports and accountings under the Montana beer act.	1/11/74	1/21/74		1/21/74	DO PASS	Signed By Governor
HB 784	To amend section 10-622, RCM relating to the appointment & removal of probation officers for the juvenile dept. of district courts, etc.	1/14/74	1/30/74	Was scheduled 1/22/74, will be rescheduled.	2/5/74	DO NOT PASS	Killed In Committee
HB 789	Specifying the powers of trustees, providing an effective date; and repealing sections 86-312, 86-327 & 86-607, R.C.M. 1947.	1/14/74	1/18/74		1/21/74	DO PASS AS AMENDED	Governor
HB 798	For the general revision of the laws relating to juveniles & juvenile courts; providing for other matters relating to treatment, etc.	1/14/74	1/22/74		2/15/74	DO PASS AS AMENDED	Governor
HB 797	For the general revision of the laws relating to abused, neglected and dependent children or youth, & repealing section 10-501, etc.	1/15/74	1/22/74		2/16/74	DO PASS AS AMENDED	Governor
HB 809	Excluding members of certain peer review committees & professional standards review committees from liability in certain, etc.	1/15/74	1/23/74		1/23/74	DO NOT PASS	Killed In Committee

JUDICIARY COMMITTEE

January 22, 1974

The tenth meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Tuesday, January 22, 1974 at 9:10 AM. All members were present except Representatives Baucus, Lucas, Roberts and Warfield, absent, excused.

Bills scheduled for hearing this date were House Bills Nos. 797, 798 and 784.

Chairman Hall opened the meeting stating the committee had three bills before it for hearing today. Representative Quilici has asked that hearing on House Bill 784 be delayed. Those present who wish to testify will be allowed to do so and then will hold further hearing on this at a later date.

HOUSE BILL 772 Chairman Hall stated that at the request of committee he had asked Mr. Kenneth Wynn and Mr. Tom Mulholland of the Liquor Control Division of the Department of Revenue to answer questions.

Chairman Hall stated that a gentleman present wished to record minutes of the meeting and what was the committee wish on this. Representative Bell stated the secretary's minutes are the official recording of the proceeding. Representative Marbut agreed. Concensus was to go ahead and let them record the meeting.

Representative Marbut questioned if in repealing Section 4-133 are they also repealing club licenses and then how would a club get license and would they be transferrable. Mr. Wynn answered this bill repeals section no longer used, only section 4-133 could be repealed.

Chairman Hall then read Sections 4-403 and 4-333. Section 4-403 came into existence under quota laws of 1947 and superceded 4-333. Other licenses were redesignated or reclassified as regular licenses. This older section no longer applied as it was superceded.

Representative Marbut stated that only rationale for passing the bill is that it was outdated.

HOUSE BILL 784 Chief sponsor Representative Quilici requested that hearing on this bill be postponed so hearing will be postponed as no witnesses are present.

HOUSE BILL 797 Representative John C. Hall, is chief sponsor
HOUSE BILL 798 of these bills pertaining to the youth acts.
He stated he would turn the hearing over to Judge Haswell. The proponents and opponents were each allowed twenty minutes time.

Proponent Judge Frank Haswell stated he supports these two bills. Arrived at draft of bills so have some understanding of working of Council which was created by Governor Forrest Anderson. Upon commission of the Council they immediately examined the laws. Started out on task by calling on consultants Harry Lawson of Colorado and David R. Smith of New Mexico who indicated there were certain deficiencies in juvenile provisions in the code. Judge Haswell read these from a booklet entitled "Report on Consultation to the State of Montana Governor's Juvenile Justice Committee", of which the original copy is attached with original set of these minutes.

The Council then met for a period of six months, came up with a redraft of juvenile code, held public meetings around the state on this, received two to three hundred comments, suggestions and criticisms from people who read the proposal or attended the hearings. Also requested the Governor's Crime Control Commission to secure information from specialists in the field. Then revised final draft again. These bills represent best judgement of juvenile court and personnel.

Judge Haswell stated he thinks the bills have sufficient specificity to conform to Supreme Court law. Feels that while this may not be the last answer and may be subject to amendment it is an improvement for the State of Montana.

Judge Robert S. Keller, Kalispell, volunteered to attend the meetings as an interested person. He stated this is a good act. Gave background on Judge Haswell and himself. Feels this act is consistent with what is being done in other forty-nine states. Stated one of the major features of this new act is that the offender has counsel. When they have counsel there are a number of alternatives for disposition. Stated there has been criticism that every one of this council is from within the system. The group was a broad group from all over the U.S. and it was open to everybody who was interested. Feels if act does nothing else it does give counsel and also the way it is written it can be amended.

Proponent Harold Hanser from Billings stated many provisions found in the juvenile justice bill have been used for two years in Yellowstone County. This bill gives team approach to handling child abuse problems. This bill is acceptable to those who have to work with it. Has a high degree of flexibility and spells out roles each person plays in child abuse. Feels it is vital Montana get a legal system that will handle juvenile abuse cases adequately. The bill also eliminated some laws that haven't been used for thirty years.

Proponent Helen Camphey, a citizen representative volunteer counselor for three years for the crisis center talked more about

philosophy of the act. Stated in their work on this tried to specify informal procedures, to not be punitive but rather rehabilitative, provided provisions for group homes.

Chairman Hall stated presentation of proponents concluded though they had seven minutes left.

Margaret Stewart, representing SRS, stated the local office of SRS is the County Welfare office. Presented copy of bill with proposed changes to the bill by SRS.

James Piper, director of 4-C's, stated he concurs with these bills and the amendments as proposed.

Tom Honzel, training co-ordinator for County Attorneys Association, was denied time to ask questions of proponents.

Hearing turned over to opponents of bill.

Lyle Monroe, a social worker in Bozeman, who also was a Con-Con delegate, stated he is opposed to this bill. Left prepared written testimony. Wants this bill killed and appointment to come up with a better bill.

Vernon Huffman, juvenile officer from Billings, stated he feels the commission was slanted, no doctor, youth and others on this council.

Opal Weinbrenner, representing self and is a senior at University of Montana, opposed bill. Left prepared testimony. (See exhibit).

Opponent Raymond P. Linder, representing Youth Development Bureau, read from prepared statement (see exhibit). Mr. Hall stopped the reading and pointed out committee members can read.

Charles F. McCarthy, Youth Development Bureau, stated he was not opposed to bill but urged some changes be made. Hopes the revision will be an ongoing thing.

Tom Honzel stated there were some things to be considered. The county attorneys are concerned with House Bill 798. Under definition of probation county attorneys will have to file more petitions. Section 18, which deals with rights of individual is tied to basic legal rights of Miranda warning. Feels these rights should be enumerated in the act. Under waiver in this Section 18 if youth over age of twelve this may make an effective waiver. Under Section 21 regarding dispositional hearings the County Attorneys Association feels this should be mandatory, not a case of "may" to examine parents. Under Section 34, take probation officer out of area of law enforcement.

Chairman Hall stated he would have to stop the testimony so committee members will have time for questions.

Testimony was closed.

Representative Bell requested Tom Honzel to write up his proposed amendments and bring them in.

Representative McKittrick quiered of Mr. Monroe his objections to this bill. Mr. Monroe stated the problem was that the act didn't go far enough.

Representative McKittrick questioned the right of search warrant, how do you justify the probable cause and civil proceeding. Mr. Hanser replied that feeling is that you are allowing giving of quite a bit of authority. Is not a search warrant. Burden of proof is on an affidavit.

Representative McKittrick questioned how you could subject a parent to a medical exam when this is not a criminal act.

Representative Yardley pointed out definition on page 2 of House Bill 797, where talking about abuse. "Excessive" and "failure to thrive" are illusive terms. Was answered that national standards indicate it sets up a rebuttable situation when child comes in with fractured skull, broken bones and pediatrician has a chart which shows averages which indicate when a child isn't thriving. Amounts to medical abuse.

Chairman Hall interrupted to comment that are now seeing one of real problems of committee system in legislature. Time has run out and committee members must leave.

HOUSE BILL 1049 Chairman Hall introduced this notice provision bill. He requested permission to ask action be deferred until action taken on Uniform Probate Code.

Representative Marbut moved action be deferred until action is taken on the Uniform Probate Code. Motion carried.

HOUSE JOINT RESOLUTION 72 Status of bill to which this resolution pertains is that motion to reconsider has been defeated in the House, the motion has been passed and cannot be called back.

Representative Marbut moved that action on this bill be indefinitely postponed, pending outcome of bills in the Senate now relating to the same issue. Motion carried with Representative Greely voting no.

Time ran out and the meeting adjourned at 10:40 AM.

15/ JOHN C. HALL
by: *John C. Hall*
JOHN C. HALL, CHAIRMAN

JCH:pb

Testifiers

Shirley M. Miller
Bureau Chief
Youth Development

Charles F. McCarthy
Asst. Bureau Chief
Youth Development

Raymond P. Linder
Planning & Research
Youth Development

HB 798

"MONTANA YOUTH ACT"

introduced in the 43rd Legislative
Assembly by: John C. Hall, and
Pat McKittrick.

Introduction

These remarks, offered to this subcommittee, attempt to respond to the proposed Montana Youth Act in the framework of Article II, Section 15 (Rights of persons not adults) and Article II, Section 4 (Individual dignity) of the 1972 Montana State Constitution.

Article II,
Section 15

"The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."

Article II,
Section 4

"The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

In an attempt to bring some order to these comments, we have tied them as much as possible to the pages and lines and sections of the bill.

page 2,
line 6

Section 10-1202: Definition of Purpose. To take a somewhat broader perspective than presented, some thought is necessary concerning the purpose of the Youth Court.

"...The state's authority to legislate in the area of the protection, care, custody, and maintenance of juveniles was a manifestation of the doctrine of parens patriae.

"The right of the state, as parens patriae, to deny to the child procedural rights available to his elders was elaborated by the assertion that a child, unlike an adult, has a right 'not to liberty but to custody.' ...If his parents default in effectively performing their custodial functions--that is, if the child is 'delinquent'--the state may intervene. In doing so, it does not deprive the child of any rights, because he has none. It merely provides the 'custody' to which the child is entitled. (In re Gault, 387 U.S. 1, 17 (1967)).

"The role of the juvenile court was not to determine the guilt or innocence of the child, as in an adversary system, but rather to reform and treat the delinquent through a rehabilitative system." (Rose, "Juvenile Statutes and Noncriminal Delinquents: Applying the Void-for-Vagueness Doctrine, 4. Seton Hall Law Review, 184.

Sect. 10-1202
continued

page 3,
line 12

page 5,
lines 3-16

It strikes us, especially in light of the positive phrasing of Article II, Section 15 of the Constitution, that a very high standard for parens patriae exists.

Section 10-1203: Definitions. Probation is a term used numerous times in the "Act" yet it does not seem to be defined here or in other sections.

Section 10-1203: Definitions. Passing over the tempting argument that the state cannot legislate against the condition youth (Article II, Section 4), we concentrate on the void-for-vagueness doctrine.

"The fact that a child is under a moral obligation to obey his parents does not preclude the legislature, in the exercise of its police power, from making that same obligation a legal one, with criminal penalties for its breach." (Court comment in Commonwealth v. Brasher, 270 N.E.2d 389 Mass., 1971)

"Due process requires statutory definiteness so that a person of ordinary intelligence does not have to guess as to its meaning." (Connally v. General Const. C., 269 U.S. 385, 391 (1926))

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law." (Noah Weinstein, Legal Rights of Children. National Council of Juvenile Court Judges)

"Void-for-vagueness doctrine has primarily been limited to criminal statutes; however some courts have recognized the doctrine's applicability to 'civil' statutes.

Small v. American Sugar, 267 U.S. 233 (1952):

Gesicki v. Oswald, 336 F. Supp. 371 (S.D.N.Y. 1971):

"A three-judge Federal Court considered the statutory phrases 'morally depraved' and 'in danger of becoming morally depraved' (l.c. 374). A 19-year-old girl was adjudged a 'wayward minor' and placed in a foster home where she violated probation by running away, and then transferred to an adult penal institution. The Court held that the Wayward Minor Statute punished a status or condition rather than a specific act and thus fell within the scope of Robinson v. California, 370 U.S. 662 (1962), which held that 'status' of narcotic addiction could not be constitutionally punished as a criminal offense. The Wayward Minor Statute was also considered to be unconstitutionally vague and also void for the further reasons that it contained no requirement for special treatment substantially different from that afforded criminals. Affirmed by U.S. Supreme Court, 406 U.S. 913 (1972)." (Weinstein, Legal Rights of Children)

page 5,
lines 9-11

page 6,
line 12

Section 10-1206: Jurisdiction of court.

"The conduct-illegal-only-for-children category of the court's jurisdiction should be substantially circumscribed so that it ceases to include such acts as smoking, swearing, and disobedience to parents and comprehends only acts that entail a real risk of long-range harm to the child, such as experimenting with drugs, repeatedly becoming pregnant out of wedlock, and being habitually truant from school. Serious consideration, at the least, should be given to complete elimination of the court's power over children for non-criminal conduct." (Challange of Crime in a Free Society)

page 9,
lines 17,18

Section 10-1209: subsection 4. Intake Procedure. Shouldn't it be the arresting officer who is responsible for the advising of rights, particularly in a criminal investigation?

page 10,
lines 1,2

Section 10-1209: Subsection 4d. Intake Procedure. Lawyers are prohibited from representing both clients to a legal proceeding yet here we have explicit law which allows a probation officer to do just that. NO MAN CAN SERVE TWO MASTERS. Either the probation officer works for the court or he works for the youth. It is not possible to do both

page 8,
line 23

Section 10-1209: Intake procedure.

"The statutes generally applicable to juvenile matters provide that taking a juvenile into custody shall not be deemed an arrest.

A. Arrest for an act which would be criminal if committed by an adult.

In this type of delinquency it should be argued that the juvenile has the same rights as an adult where there is a possibility that the juvenile can be transferred to the adult criminal court for trial or placed in a 'state institution'. Some courts have held that probable cause is required.

Most juvenile courts require that the juvenile be taken to a specific facility and his parents notified.

State v. Arbiter, 408 S.W.2d. 26(Mo.,1966), Cooley v. Stone, 414 F.2d 1213 (D.C. Circuit. 1969), Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis., 1969) (Weinstein, Legal Rights of Children: p.22)

B. Arrest for an act which would not be criminal if committed by an adult.

Although the position could be taken that a juvenile has the same constitutional rights as an adult, the Supreme Court, in dealing with children, has not accorded them all the constitutional rights of an adult. ...In fact the Supreme Court has been careful to distinguish between acts of children which are criminal if committed by an adult and those which are not.

It is submitted that a proper test would be a consideration of what the juvenile court proposes to do for or to the child. Gault and the other Supreme Court cases are critical of the Court because it has not lived up to its high promise envisioned by its founders--

9

the juvenile court metes out punishment rather than treatment, it should be analogized for the purposes of constitutional protection, to criminal courts." (Weinstein, Legal Rights of Children: p. 23)

page 17,
lines 12,13

Section 10-1215: Petition. Subsection 7. "Shall be furnished to the youth upon request", if referring to the whole of Section 10-1215, would seem to violate and vitiate Gault. The qualifying clause--upon request--seems even more strange in light of the requirement in Section 10-1216: Subsection 2 (page 17, lines 24,25 and page 18, line 1): "The summons shall advise the parties of their right to counsel under the Montana Youth Act and shall have attached to it a copy of the petition."

page 20,
line 4

Section 10-1218: Basic Legal Rights. In Article II, Section 24 of the Montana Constitution (Rights of the Accused) rights are guaranteed in all criminal prosecutions. Since a delinquent is a youth who has committed an offense that would be a crime if it was committed by an adult, it is a criminal proceeding and therefore is subject to this section of the constitution. Further, the argument reproduced from Weinstein at the top of this page may apply the constitutional guarantee to offenses which would not be a crime if committed by an adult.

page 23,
line 19

Section 10-1220: Adjudicatory hearing.

"Burdens of Proof in Adjudicatory Phase:

- A. For Acts which would be criminal if committed by an adult--beyond a reasonable doubt.

Winship, 397 U.S. 358(1970), State v. V.D.B., 270 So.2d. 6 (Fla.,1972).

Winship held retroactive for criminal status acts of delinquency.

Ivan v. N.Y. City, 407 U.S. 203 (1972).

- B. For acts which are delinquent but not criminal if committed by an adult.

Warner v. State, 258 N.E. 2d. 860(Ind.,1970), applies reasonable doubt standard to criminal status offenses but expressly holds this standard is not applicable to other grounds of delinquency. "(Weinstein, Legal Rights of Children; page 29,30)

page 25,
line 17

Section 10-1221: Disposition Hearing.

"Juvenile's counsel must be given an opportunity to recommend a disposition. New Jersey v. A.H., 279 A.2d 133(N.J.Sup. 1971).

The right of a juvenile to present evidence relating to disposition is founded on the right of due process. Mikkelsen, 226 Cal. App. 2d 467, 38 Cal Rptr. 106(1964).

Section 10-1222: Dispositon of Youth.

Rationale for rejecting traditional procedure of juvenile treatment.

"The California Youth Authority for the last 5 years has been conducting a controlled experiment to determine the effectiveness of another kind of alternative treatment program for juveniles. There, after initial screening, convicted juvenile delinquents are assigned on a random basis to either an experimental group or a control group. Those in the experimentla group are returned to the community and receive intensive individual counseling, group counseling, group therapy, and family counseling. Those in the control group are assigned to California's regular institutional treatment program. The findings so far: 28 percent of the experimental group have had their p̄aroles revoked, compared with 52 percent in the control group. Further more, the community treatment program is less expensive than institutional treatment."
(Challange of Crime in A Free Society. 1967).

"What research is making increasingly clear is that delinquency is not so much an act of individual deviancy as much as a pattern of behavior produced by a multitude of pervasive societal influences well beyond the reach of the actions of any judge, probation officer, correctional counselor, of psychiatrist. ...Official action may actually help to fix and perpetuate delinquency in the child through a process in which the individual begins to think of himself as delinquent and organizes his behavior accordingly."
(Challenge of Crime in A Free Society.)

PARENS PATRIAE AS THE QUID PRO QUO IN LIEU OF EQUAL RIGHTS:

Cardozo, J., in Findlay v. Findlay, 148 N.E. 624, 626 (N.Y.).

"A juvenile who twice ran away from a training school was, by Court Order, transferred to the state penitentiary for the durattion of his minority. The Supreme Court of Vermont reversed, stating that the validity of the juvenile system depends upon its adherence to its protective rather than its penal aspects. If the state dispensed with traditional constitutional safeguards available in criminal proceedings, it must provide effective therapy and 'the rehabilitative caretaking offered in exchange for constitutional protections must be substantive and real, not mere verbiage.'
In re Rich, 216 A. 2d 266 (Vt.,1966)."
(Weinstein, Legal Rights of Children. page 2)

Section 10-1227: Private Agency.

"To give the juvenile the care as nearly as possible equivalent to that which should have been given by his parents established not only an important policy objective, but, in an appropriate case, a legal right to a custody that is not inconsistent with the parens patriae premise of the law."
(Weinstein, Legal Rights of Children: p. 32)

Section 10-1228: Probation Revocation. In re Winship quantum of proof for conviction for an alleged violation of criminal laws was raised from a preponderance of the evidence to proof beyond a reasonable doubt. Lines 14-17 of the Youth Act only require preponderance for revocation. It is possible the In re Winship applies to this section because a youth who has his probation revoked is by definition (Section 10-1203; Subsection 12b) delinquent, and to be delinquent in Montana is to be adjudged criminal and the standard of evidence in a criminal case is beyond a reasonable doubt.

FURTHER...

"Arrest for an act which would be criminal if committed by an adult.

In this type of delinquency it should be argued that the juvenile has the same rights as an adult where there is a possibility that the juvenile can be transferred to the adult criminal court for trial or placed in a 'state institution.' Some courts have held that probable cause is required.

Most juvenile courts require that the juvenile be taken to a specific facility and his parents notified.

State v. Arbiter, 408 S.W.2d.26 (Mo.,1966), Cooley v Stone, 414 F.2d 1213 (D.C. Cir. 1969), Baldwin v. Lewis, 300 F. Supp. 1220 (E.D. Wis.,1969)."
(Weinstein, Legal Rights of Children: p. 22).

REVOCATION OF PROBATION--

"Consider the possible effect of Gagnon v. Scarpelli, 36L.Ed. 2d 656 (May,1973): In criminal proceedings defendant held entitled to preliminary and final hearing before an 'independent' decision-maker (as a parole board) prior to revocation of probation; indigent probationer's right to appointed counsel at revocation hearing held determinable on a case by case basis in exercise of sound discretion of the state authority responsible for administering the probation system. In this case probation was revoked by the Wisconsin Department of Public Welfare without a hearing. The Court found no distinction in this respect between parole and probation. If counsel is refused at either the preliminary or final hearing, the grounds for refusal should be stated succinctly in the record. SEE 'Criminal Sentences: Law Without Order,' Marvin E. Frankel, Hill and Wang, N.Y. 1972."

(Weinstein, Legal Rights of Children: p. 31.

page 41,
line 13

Section 10-1232: Disposition of Records. This section orders that records of a juvenile be sealed at age 18. In Section 10-1222: Subsection 5 (page 29, lines 5-10) the Court is ordered to transmit appropriate records relating to the Youth to the Institution or Agency which will have custody of the Youth. Under this Section (10-1232) does the Court have responsibility to either retrieve those transmitted records or to order them sealed in place.

page 43,
line 12

Section 10-1234: Probation Officers.

Inherent Power of The Juvenile Court--

"The inherent power of the juvenile court to select and appoint employees reasonably necessary to carry out its functions of care, discipline, detention and protection of children who come within its jurisdiction, and to fix their compensation.

State ex rel, Weinstein v. St. Louis County, 451 S.W.2d 99(Mo.,1970).

Carrigan, "Inherent Powers and Finance," Trial, Nov./Dec. 1971.
(Weinstein, Legal Rights of Children: page 32)."

This section is doubly interesting because it talks about the salary of a probation officer. In this session of the legislature the Senate is hearing two bills related to salary (SB 682, SB 683). How do those bills relate to the salary section of this bill and how do all the salary sections relate to the inherent power of the juvenile court?

page 49,
line 24

Section 10-1241: Publicity. Under definition of Purpose, we covered the logic for the existence of a youth court--parens patriae. Parens patriae is supposed to protect children and youth, not place them at the center of attention. Publicity is something that is in fundamental opposition to the logic of the Youth Court.

In a different vein, is a trial on dependency-neglect a felony trial? If it is (the Youth Court has jurisdiction), then the press enjoys the protection of this section. We do not feel that publicity would ever help in a felony trial on dependency neglect.

Remember, the Court is interested in rehabilitation--not punishment.

page 51,
lines 9-19

Section 10-1243: Definitions. If a youth commits and act that is delinquent or one that is not (status offense), the judge may find that he really didn't do it, and therefore, adjudge him merely a youth tending toward delinquency. How can a youth be tending toward delinquency?...he is by definition a delinquent if he does the act.

JUDICIARY COMMITTEE

February 16, 1974

EXECUTIVE SESSION

The thirty second meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Saturday, February 16, 1974. Representative Dan Yardley, Vice-Chairman, presided. All members were present except Representatives Hall and Warfield, absent, excused.

Meeting was called for purpose of executive session.

HOUSE BILL 797 This bill, which has been placed in a subcommittee, is a measure for the general revision of the laws relating to abused, neglected and dependent children or youth. Representative Marbut explained that the subcommittee found the construction of House Bill No. 797 was not what they liked, the order of various sections was changed but only one substantive change. Have for each committee member a copy of substitute bill (see exhibit).

Representative Marbut moved to adopt this material as the amendment to House Bill 797 subject to further amendments. Acting Chairman Yardley ruled the bill, without objection, will be inserted in lieu of the original bill. Representative Towe stated that an example of problems of original bill could be found on page 10 in reference to waiver of children. Subcommittee questioned what this referred to. Rosemary Zion, who worked with the subcommittee pointed out the bill as proposed by SRS with some of the changes they wanted and stated a couple of things left out of bill the subcommittee wanted in. Changes in declaration of policy were put in the substitute bill. Also youth in need of care as defined in House Bill 798 was put in this bill.

Representative Greely questioned the transfer of venue, residency problem still in this bill. Under this act it can be transferred. Representative Lucas questioned if 10-1207 referred to provisions in other bill? Was advised that they do, are same as House Bill 798 according to Judge Haswell. No problem here.

Confidentiality ^{was changed} is first subject ^{discussed} changed. Ms. Zion read part from bill proposed by SRS (see exhibit). Representative Greely moved to strike on page 3, line 24 of the substitute bill the word "strictly". The Chair ruled that if no objection will strike "strickly". No objection.

Representative Marbut moved to amend on page 4, line 16 after the word "services" by inserting "or any local and county welfare offices", also on page 4, line 19 after the word "services" add "and the county welfare department", also on page 4, line 5 same change. He explained this language as

written is intended by SRS to give them control over the Welfare Department. Motion to amend carried.

Subcommittee also explained that they felt petitions for "protective services" and "investigative authority" became difficult to understand in original bill. Subcommittee wanted to separate into two sections. No language was taken out of act, just rearranged.

On page 5 of the bill with amendments proposed by SRS (see exhibit) the subcommittee had a split of opinion here. This pertains to notice where the child's parent is a minor. Representative Greely stated that in cases of minor female in Great Falls they always appoint guardian, also like to have her talk to the judge. This in the area of minor parent. Representative Marbut stated that he feels in practical application in major cases of minor girl with a child she will be estranged from the parents. If presumption information will not go out to parents might make it easier to handle case. Representative McKittrick felt for jurisdictional purposes should notify the parents. Judge Haswell stated that notice provision is jurisdictional and added that any notice, to parent or guardian is only sure way to have a guardian appointed.

A motion by Representative Towe to amend substitute bill on page 5, line 24 by adding a new subsection (6) reading: "(6) Where a parent of the child is a minor notice shall be given to the minor parents guardian and if there is no guardian the court shall appoint one" carried.

Ms. Zion explained that on page 7, line 7 of substitute bill there is a new section. Here they had to renumber the code sections. Is a different procedure altogether. Is almost like an injunction procedure. The kinds of relief the court may give are on page 8, line 17. Representative McKittrick questioned if there was a certain time for particular date for "show cause hearing" in page 8, line 8, subsection (c). Wants to add on page 8, line 12 the language "Except as otherwise provided herein, the rules of civil procedure shall apply". Chairman Yardley stated if no objection will deem this be added. No objection.

Ms. Zion explained section on hearing is covered on page 9, section 8. Suggested "waiver of privileges" is the right terminology. Subcommittee proposed to amend this on page 9, line 21 by striking the words "be waived" and inserting in lieu thereof the new terminology "not apply to the extent any testimony relates to such matters". Much discussion followed on this proposed change, especially between Representatives Towe and Greely. Representative Greely felt that if someone brought up question of privilege could be decided at that point.

Representative Towe moved to amend on page 9, line 21 by striking the words "be waived" and inserting in lieu thereof the

terminology "not apply to the extent any testimony relates to such matters.". A substitute motion by Representative Greely to amend on page 9, line 21 by striking the words "be waived" and insert in lieu thereof the words "not apply" failed with Representatives Lucas, Bell, Roberts, Greely and Yardley voting yes. Motion to amend by Representative Towe carried with Representatives Roberts, Greely, Lucas, Bell and Yardley voting no.

Representative Marbut moved to amend on page 10, line 18 after the word "proper" by adding the language "limited to the amount of cost of reasonable care of normal child at home."

Ms. Zion suggested adding additional language at end of line 20 on page 10 to read "a copy of written report shall be provided to all parties before the proceedings". Representative Marbut said he suggested this as here have a situation where the court is making change involving SRS, penalty with respect to abuse of child. Representative Lucas suggested changing on page 10, line 20 at the end by saying "reasonable care of the child at home". Representative McKittrick questioned whether notice of hearing would be given to parent as well as guardian which he was told yes, it would be. In answer to query by Representative Lucas, Representative Marbut replied that in the typical care of the child's case would be upgraded by putting it in another home. Representative Lucas stated that in those instances where it will cost significantly more and parents can pay it they should. Representative Marbut explained why he felt a limit was appropriate. Representative McKittrick stated it was the court's power to say "it's a civil matter, this child needs medical attention, you have ability to pay and should".

Representative Lucas moved to amend on page 10, lines 18, 19 and 20 by striking after the word "proper" the remainder of line 18, strike lines 19 and 20. Representative Marbut opposed this motion, said to look at next paragraph, the whole process might be influenced by collection of funds. Representative Towe stated this problem not likely to come up, generally parents aren't able to pay this much. Representative Bell stated he thought they were talking about wisps of smoke. Motion to amend carried with Representatives Lucas, Bell, McKittrick, Brown, Greely and Yardley voting yes, Representatives Marbut, Roberts, Baeth and Towe voting no.

Ms. Zion explained that section 10 covers judgement. On page 13, subsection (5), lines 17 through 21 is a change of substantive nature. Put this whole section in so court can still modify. Committee discussed this briefly. Representative Greely pointed out a type error on page 14, line 8 and it was deemed without objection to change the "a" to "the".

Motion made previously by Representative Marbut of DO PASS AS AMENDED carried unanimously.

Judge Haswell stated that there was no subject more controversial than juvenile matters. Feels what has been done on these bills is good. Commended the committee for their hard work on the youth bills.

1 HB BILL NO. 797

2 INTRODUCED BY Hall, McKittrick

3
4 10-501 THROUGH 10-519

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL REVISION
7 OF THE LAWS RELATING TO ABUSED, NEGLECTED AND DEPENDENT CHILD-
8 REN OR YOUTH; AND REPEALING SECTIONS 10-501 THROUGH 10-519,
9 R.C.M. 1947."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. There is a new section to be numbered 10-1300,
13 R.C.M. 1947, which reads as follows:

14 10-1300. Declaration of policy. It is hereby declared to
15 be the policy of the state of Montana:

16 (1) To insure that all youth are afforded an adequate
17 physical and emotional environment to promote normal development;

18 (2) To compel in proper cases the parent or guardian of a
19 youth to perform the moral and legal duty owed to the youth;

20 (3) To achieve these purposes in a family environment
21 whenever possible; and

22 (4) To preserve the unity and welfare of the family when-
23 ever possible.

24 Section 2. There is a new section to be numbered 10-1301,
25 R.C.M. 1947, which reads as follows:
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10-1301. Definitions. (1) "Child" or "youth," for purposes of this act, means any person under eighteen years of age.

(2) "Abuse" or "neglect" means (a) the commission or omission of any act or acts which materially affect the normal physical or emotional development of a youth, any excessive physical injury, sexual assault or failure to thrive, taking into account the age and medical history of the youth, shall be presumptive of "material affect" and non-accidental; or

(b) the commission or omission of any act or acts by any person in the status of parent, guardian or custodian who thereby and by reason of physical or mental incapacity or other cause, refuses, or with state and private aid and assistance is unable to discharge the duties and responsibilities for proper and necessary subsistence, education, medical or any other care necessary for his physical, moral and emotional well-being.

(3) "Dependent youth" means a youth who is abandoned, dependent upon the public for support, and who is destitute or is without parents or guardian or under the care and supervision of a suitable adult or who has no proper guidance to provide for his necessary physical, moral and emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency, if the parent or parents voluntarily relinquish custody of said child.

1 (4) "Youth in need of care" means a youth who is de-
2 pendent or is suffering from abuse or neglect within the
3 meaning of this act.

4 Section 3. There is a new section to be numbered
5 10-1302, R.C.M. 1947, which reads as follows:

6 10-1302. Jurisdiction and venue. (1) In all matters
7 arising under this act, the youth court shall have concurrent
8 jurisdiction with the district courts over all youths who
9 are within the state of Montana for any purpose, or any
10 youth or other person subject to this act who under a
11 temporary or permanent order of the court has voluntarily
12 or involuntarily removed himself from the state or the juris-
13 diction of the court, or any person who is alleged to have
14 abused, neglected or caused the dependency of a youth who is
15 in the state of Montana for any purpose.

16 (2) Venue shall be determined pursuant to Section 10-1207,
17 R.C.M., 1947.

18 Section 4. There is a new section to be numbered 10-1308,
19 R.C.M. 1947, which reads as follows:

20 10-1308. Confidentiality. The case records of the
21 department of social and rehabilitation services, its local
22 affiliate, the county welfare department, the county attorney
23 and the court concerning actions taken under this act shall be
24 kept ~~strictly~~ confidential unless the court determines that
25 they should be released.

1 Section 5. There is a new section to be numbered
2 10-1309, R.C.M. 1947, which reads as follows:

3 10-1309. Emergency protective service. Any social
4 worker of the department of social and rehabilitation
5 services, ~~peace officer or county attorney~~ who has reason to
6 believe any youth is in immediate or apparent danger of vio-
7 lence or serious injury shall have the authority to immediately
8 remove the youth and place him in a protective facility. The
9 department may make a request for further assistance from the
10 law enforcement agency or take such legal action as may be
11 appropriate.

12 A petition shall be filed within forty-eight (48) hours
13 of emergency placement of a child unless arrangements accept-
14 able to the agency for the care of the child have been made
15 by the parents.

16 The department of social and rehabilitation services shall
17 comply with the judicial procedures set forth in section 10-
18 1305, R.C.M., 1947.

19 The department of social and rehabilitation services shall
20 make such necessary arrangements for the youth's well-being as
21 are required prior to the court hearing.

22 Section 6. There is a new section to be numbered 10-1310,
23 R.C.M. 1947, which reads as follows:

24 10-1310. Petitions. (1) The county attorney shall be
25 responsible for filing all petitions alleging abuse, neglect
26

1 and dependency. He may require all state, county and
2 municipal agencies, including law enforcement agencies, to
3 conduct such investigations and furnish such reports as may
4 be necessary.

5 (2) Such petitions shall be given preference by the
6 court in setting hearing dates.

7 (3) A petition alleging abuse, neglect or dependency,
8 is a civil action brought in the name of the state of Montana.
9 The rules of civil procedure shall apply except as herein
10 modified. Proceedings under a petition shall not be a bar to
11 criminal prosecution.

12 (4) The parents or parent, guardian or other person or
13 agency having legal custody of the youth named in the pe-
14 tition, if residing in the state, shall be served personally
15 with a copy of the petition and summons at least five (5) days
16 prior to the date set for hearing; if such person or agency
17 resides out of state or is not found within the state, the
18 rules of civil procedure relating to service of process in
19 such cases shall apply.

20 (5) In the event service cannot be made upon the parents
21 or parent, guardian or other person or agency having legal
22 custody, the court shall appoint an attorney to represent the
23 unavailable party where in the opinion of the court the in-
24 terests of justice require.

25 (6) Any person interested in any cause under this act
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1 shall have the right to appear.

2 (7) Except where the proceeding is instituted or
3 commended by a representative of social and rehabilitation
4 services, a citation shall be issued and served upon a
5 representative of social and rehabilitation services prior
6 to the court hearing.

7 (8) The petition shall:

8 (a) state the nature of the alleged abuse, neglect or
9 dependency;

10 (b) state the full name, age and address of the youth,
11 his parents or guardian or person having legal custody of
12 the youth;

13 (c) state the names, addresses and relationship to the
14 youth and all persons who are necessary parties to the action.

15 (9) The petition may ask for the following relief:

16 (a) temporary investigative authority and protective
17 services;

18 (b) temporary legal custody;

19 (c) limited legal custody;

20 (d) permanent legal custody, including the right to
21 consent to adoption;

22 (e) appointment of guardian ad litem;

23 (f) any combination of the above or such other relief as
24 may be required for the best interest of the youth.

25 (10) The petition may be modified for different relief at
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any time within the discretion of the court.

(11) The court may at any time on its own motion, or

the motion of any party, appoint a guardian ad litem for the

youth, or counsel for any indigent party.

(12) This section shall not apply to a petition for tempo-

rary investigative authority and protective services.

Section 7. There is a new section to be numbered 10-1311,

R.C.M. 1947, which reads as follows:

10-1311. Petition and order for temporary investigative

authority and protective services.

(1) In cases where it appears that a youth is abused or

neglected or is in danger of being abused or neglected the

county attorney may file a petition for temporary investigative

authority and protective services.

(2) A petition for temporary investigative authority and

protective services shall state the specific authority re-

quested and the facts establishing probable cause that a youth

is abused or neglected or is in danger of being abused or

neglected.

(3) The petition for temporary investigative authority and

protective services shall be supported by an affidavit signed

by the county attorney or a social and rehabilitation services

report stating in detail the facts upon which the request is

based.

(4) Upon the filing of a petition for temporary investigative

1 authority and protective services, the court may issue an
2 order

3 (a) Granting such relief as may be required for the
4 immediate protection of the youth.

5 (b) The order shall be served by a peace officer or
6 a representative of the state social and rehabilitation
7 services on the person or persons named therein.

8 (c) The order shall require the person served to
9 immediately comply with the terms thereof or upon failure to
10 so comply to appear before the court issuing the order on the
11 date specified and show cause why he has not complied with the
12 order.

13 (d) Upon a failure to comply or show cause the court may
14 hold the person in contempt or place temporary legal custody
15 of the youth with the state social and rehabilitation services
16 until further order.

17 (e) The court may grant the following kinds of relief:

18 (i) right of entry by peace officer or state social and
19 rehabilitation services worker;

20 (ii) medical and psychological evaluation of youth or
21 parents, guardians, or person having legal custody;

22 (iii) require the youth, parents, guardians or person
23 having legal custody to receive counseling services;

24 (iv) place the youth in temporary medical facility or
25 facility for protection of the youth;

1 (v) require the parents, guardian or other person having
2 custody to furnish such services as the court may designate;

3 (vi) such other temporary disposition as may be required
4 in the best interest of the youth.

5 Section 8. There is a new section to be numbered 10-
6 1312, R.C.M. 1947, which reads as follows:

7 10-1312. Hearing. (1) In a hearing on a petition under
8 section 10-1310, R.C.M., 1947, the court shall determine
9 whether said youth is an abused, neglected or dependent child,
10 and ascertain, as far as possible, the cause thereof.

11 (2) The court shall hear evidence regarding the residence
12 of the child, whereabouts of the parents, guardian or nearest
13 adult relative, the financial ability of any such parents or
14 parent, to pay the cost of care of the child, whether or how
15 long the child has been maintained in whole or in part by public
16 or private charity, and may take into consideration the report
17 of the county welfare department filed with the clerk of the
18 court, pursuant to section 10-1313, R.C.M., 1947.

19 (3) In all civil and criminal proceedings relating to
20 abuse, neglect or dependency the doctor-patient privilege and
21 husband-wife privilege shall be waived.

22 Section 9. There is a new section to be numbered 10-1313,
23 R.C.M., 1947, which reads as follows:

24 10-1313. Investigation of parents' financial ability.

25 Whenever any petition is filed with the clerk of the
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1 district court alleging abuse, neglect or dependency, the
2 clerk of such court shall immediately deliver to the county
3 welfare department of the county in which the petition is
4 filed, a copy of the petition with a notation thereon giving
5 the day and time fixed by the court for hearing the petition.
6 Upon receipt of such copy of petition the county welfare
7 department shall make an investigation for the purpose of
8 ascertaining whether the parent or parents, if any, of the
9 child live within the county and the financial ability of such
10 parent or parents, if any, to pay the cost of supporting the
11 child in a foster home, and shall file with the clerk of such
12 court, before the time fixed for the hearing, a written report
13 of such investigation. If, upon hearing, the court finds and
14 determines that the child has parents, or a parent, who is
15 financially able to pay a part or the whole of such cost, and
16 the child is ordered placed in a foster home, the court shall
17 make an order requiring such parents, or parent, to pay such
18 amount as the court may deem proper, provided, however that this
19 amount shall not exceed the cost of reasonable care of a normal
20 child at home.

21 If the child is placed in a foster home, the state de-
22 partment of social and rehabilitation services shall pay one-
23 half (1/2) of the cost thereof, and the county in which such
24 child has residence shall pay the other one-half (1/2) thereof.
25 Any amount collected from a parent or parents, when a child is
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1 placed in a foster home, shall be transmitted to the
2 state department of social and rehabilitation services. The
3 department shall then pay to the county one-half (1/2) of the
4 amount so collected.

5 Section 10. There is a new section to be numbered 10-
6 1314, R.C.M. 1947, which reads as follows:

7 10-1314. Judgment. (1) If a youth is found to be abused,
8 neglected, or dependent, the court may enter its judgment
9 making any of the following dispositions to protect the welfare
10 of the youth:

11 (a) permit the youth to remain with his parents or guardian
12 subject to those conditions and limitations the court may pre-
13 scribe;

14 (b) transfer legal custody to any of the following:

15 (i) department of social and rehabilitation services;

16 (ii) a child-placing agency willing and able to assume re-
17 sponsibility for the education, care and maintenance of the
18 youth and which is licensed or otherwise authorized by law to
19 receive and provide care of the youth; or

20 (iii) a relative or other individual who, after study by
21 a social service agency designated by the court, is found by the
22 court to be qualified to receive and care for the youth;

23 (c) order any party to the action to do what is necessary
24 to give effect to the final disposition, including undertaking
25 medical and psychological evaluations, treatment and counseling;
26

1 (d) order such further care and treatment as the court
2 may deem in the best interest of the youth.

3 (2) Whenever the court vests legal custody in any
4 agency, institution or department it shall transmit with the
5 dispositional judgment copies of any medical report, and such
6 other clinical, predisposition or other reports and informa-
7 tion as may be pertinent to the care and treatment of the
8 youth.

9 (3) Any youth found to be abused, neglected or dependent
10 may be committed to the Montana children's center, and if the
11 center is unable to receive the child, or if, for any other
12 reason, it appears to be in the best interest of the child, the
13 court may make such other disposition of the child as the court
14 deems best for his social and physical welfare. The form of
15 commitment shall be as follows:

16 ORDER OF COMMITMENT

17 State of Montana, County of _____, ss:

18 In the District Court for the _____ Judicial
19 District.

20 On the ____ day of _____, 19__, _____ a minor
21 of this county, was charged on the petition of _____, of
22 county attorney of _____ county, with being an abused or
23 neglected or dependent child. Upon due proof I find that
24 it is for the best interests of the child that he be taken
25 from the custody of his parents, guardian or other person
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1 having custody of him.

2 The names, addresses and occupations of the parents
3 are:

4	Name	Address	Occupation
5	_____	_____	_____
6	_____	_____	_____

7 The child's guardian is _____.

8 The child is in the custody of _____.

9 It is ordered that _____ be committed to _____
10 until discharged as provided by law.

11 Witness my hand this _____ day of _____ A.D. 19 _____.

12 _____
13 Judge

14 (4) Transfer of legal custody of a child shall include
15 guardianship of any assets or estate of the child, unless
16 otherwise specified by the court.

17 (5) Except in cases in which the court permanently
18 terminates all parental rights or rights of the guardian of
19 the youth, the court shall retain jurisdiction over the case
20 and may subsequently modify any disposition ordered pursuant
21 to this section.

22 Section 11. There is a new section to be numbered 10-
23 1315, R.C.M., 1947 which reads, as follows:

24 10-1315. The department of social and rehabilitation ser-
25 vices, shall have the primary responsibility to provide the
26

1 the protective services authorized by this act and shall have
2 the authority pursuant to this act to take temporary, limited
3 or permanent custody of a child when ordered to do so by the
4 court, including the right to give consent to adoption.

5 Section 12. There is a new section to be numbered 10-1322,
6 R.C.M. 1947, which reads as follows:

7 10-1322. Punishment of parents and other adults. (1) If
8 the evidence indicates violation of a criminal code, it shall
9 be the responsibility of the county attorney to file appropriate
10 charges against the alleged offender.

11 (2) District court shall have original jurisdiction under
12 this section.

13 Section 13. Sections 10-501 through 10-519, R.C.M. 1947,
14 are repealed.

15 Section 14. Section 10-901 is renumbered Section 10-1303;
16 Section 10-902 is renumbered Section 10-1304; Section 10-903
17 is renumbered Section 10-1305; Section 10-904 is renumbered
18 Section 10-1306; Section 10-905 is renumbered Section 10-1307;
19 Section 10-520 is renumbered Section 10-1316; Section 10-521 is
20 renumbered Section 10-1317; Section 10-522 is renumbered Section
21 10-1318; Section 10-523 is renumbered Section 10-1319; Section
22 10-524 is renumbered Section 10-1320; and Section 10-525 is
23 renumbered Section 10-1321.

24
25 -End-

43RD

LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

HOUSE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
789	1/28	2/19	2/19					2/19	
797	2/25	3/4	3/4				3/4		
798	2/25	3/4	3/4					3/4	
818	2/22	2/26,28	2/28				2/28		
848	1/31	REREFERRED	2/11						
857	1/31	2/25	2/25				2/25		
866	3/5	3/6	3/6				3/6		
875	2/22	2/26,3/6	3/6						3/6
879	1/28	2/22	2/22					MINORITY 2/22	MAJORITY 2/22
887	2/22	2/28	2/28				2/28		
901	2/28	3/6	3/6						3/6
908	2/1	3/1	3/1				3/1		
943	2/14	3/1,3/6	3/6						3/6
965	2/7	2/28,3/6	3/6						3/6
970	2/5	3/5	3/5						3/5
978	2/6	REREFERRED	2/8						
990	2/15	3/5	3/5					3/5	

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE SENATE

March 4, 1974

The meeting was called to order by Senator McKeon, chairman, at 11:00 a.m. in Room 404 of the Capitol Building.

The following bills were heard: HB 797
 HB 798
 HB 1041

HB 797--(Companion bills) Witnesses appearing on the bills:
798

Judge Frank Haswell, Juvenile Advisory Committee
Judge Robert S. Keller, District Juvenile justice
Advisory Judge
Harold Hanser, Juvenile Advisory Committee
Helen Kampfe, " " " , Billings
Shirley Miller, Youth Development Bureau
Ray Linder, " " "
Jim Pippard, 4=C
Margaret Stewart, S.R.S.
Frank R. Sennett, Deputy Director of Rehabilitation
Services

Judge Haswell said that HB 797 provided for general revisions in relating to abused, neglected and dependent children. He said it was a moderate, middle of the road approach to this problem. Judge Keller said that he has consulted with the judges of the other 49 states on juvenile law, on whether to take it from the parents approach, or from the right of the child. This law tries to meet with this conflict, by spelling out the rights of both. He said this act could be easily amended.

Mr. Hanser felt that the laws needed to be revised in this area because they are dealing with children that have changed substantially. The measure expands the definition of "abuse" and "neglect" so that they can be handled as one. This allows them to determine probable child neglect through the use of a temporary investigation pass.

Mrs. Kamfish said that HB 798 balances the legal rights of the child and attempts in moving away from the parent's role as the decision maker. The young person is required and asked to participate in the decision making of their fate. She said this bill would invite parents to participate, in conjunction with the attorney and child to determine who he is. Mrs. Kamfish said this also provides for rehabilitation of the youth, in channeling him back into society, and it specifies more inclusively, the roles of all persons involved.

Mrs. Miller and Mr. Linder submitted an attachment discussing

some of the provisions of the bill. It contains a declaration of purpose, basic legal rights of all persons, and seals all records from public disclosure. Mr. Linder pointed out one reservation of the bill in Section 10-1203 where it establishes as a criminal offender a youth in need of supervision who violates any condition of his probation. They found this ironic since HB 797 allows the court to intervene into family life. They wanted this section amended so that status offenders would not be defined as criminals.

Mrs. Steward supported both bills.

Mr. Sennett felt that HB 797 was a good bill, but he had some reservations for HB 798. He questioned why the court justice system should handle juvenile problems. He did not feel that they worked effectively in this area, and that the laws were just construed to resemble the old courts, and that the bill needed restructuring.

Judge Keeler said that the Status offender would not be held as a criminal, but would be placed under rehabilitation.

Senator Turnage felt that the bill needed to be more specific as to who is "licensed".

SENATOR TURNAGE MOVED THAT HB 797 BE CONCURRED IN; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

SENATOR TURNAGE MOVED THAT THE AMENDMENTS TO HB 798 BE CONCURRED IN; SECONDED BY SENATOR DRAKE. MOTION CARRIED UNANIMOUSLY.

SENATOR TURNAGE MOVED THAT HB 798 AS AMENDED BE CONCURRED IN; SECONDED BY SENATOR GILFEATHER. MOTION CARRIED UNANIMOUSLY.

HB 1041--Witnesses appearing on the bill:

Morris Brusett, Legal Council
Harold Pitts, Dept. of Business Regulations
W. B. Anders, Northwestern Bank

Mr. Brusett said this bill would merely allow the legislative auditor to review all state agencies to determine that programs are effectively and efficiently administered. He said this review would not be in violation with the federal statute, and that such contents cannot be disposed to anyone except designated bank examiners. There is a penalty provision. (Attch)

Mr. Pitts, opposing the bill, said that the general accounting offices have not seen fit to allow examination of the banking system. This would allow the auditors to examine an individual's borrowing records, which have nothing to do with state borrowing. He felt this information should be kept confidential. Mr. Pitts said that there has not been a bank failure since 1930, and that their bank works closely with the federal deposit examiners, and federal reserve bank, which would not

have to comply under this act. He said that should there be a conflict between the state and the federal (example: releasing information on currency control), they would have to comply under the federal law. He further stated that there were 55 nationally charter banks in Montana which the state would not have jurisdiction. He said this would hurt the dual banking system, and that if they supported one, they would be violating the other. Therefore, he recommended this bill be not concurred in.

Mr. Anders agreed with Mr. Pitts. They do not object to the review, but in the disclosure of private records.

HOLD IN COMMITTEE.

There being no further business, the meeting was adjourned to reconvene Monday, March 4, on adjournment in Room 442.



LUKE McKeon, Chairman

ROLL CALL

SENATE JUDICIARY COMMITTEE

SECOND HALF - 43rd LEGISLATIVE SESSION 1974

Date: 3-17
11 a.m.

NAME	PRESENT	ABSENT	EXCUSED
Luke McKeon	✓		
Pat Gilfeather	✓		
Paul Boyland	✓		
Mrs. Boots Hall			✓
Miles Romney			✓
Glenn Drake	✓		
Tom Harrison			✓
Jim Moore	✓		
Jean Turnage	✓		

COMMITTEE ON

JUDICIARY

BILL NO. _____

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO	Check One	
			Support	Oppose
Amster Miller	Youth Development Bureau	HB 798	X	
Ron Mullis	State 4-C's Project	HB 798	X	
Ray Snider	Youth Development	HB 798	X	
Wick Enid	MDF	HB 798		
Ann Burds	State SRS	HB 798	/	
Helen Kampfe	Juvenile Justice Advisory	HB 798	X	
Robert S. Bell	"	HB 797	X	
Frank Hamel	JJAC	HB 798	X	
Charlotte Kiny	AAUW	HB 797	X	
Harold Hansen	Juv Justice Comm	HB 797	X	
Jim Pippard	4-C	798	XX	
Margaret Stuck	SPS - Child Welfare	797	X	
Norma Carter	SPS Child Welfare	797	/	
W. S. Suddock Jr	SRS Child Welfare - N.A.	797	X	
Irwin	Dept Bus Reg.	HB 1041		X
Harold Pitts	Dept. of Bus. Reg.	HB 1041		X
John T. Padley	Mont. Bankers Assn	HB 1041		X
W. S. Suddock Jr	Mont. Bankers Assn	HB 1041		X
Frank R. Smith	Myself	H.B. 798	Neither	
Steve Nelson	MAEP	798		
Natalie Cannon	(AAUW)	797	✓	
Carol Williams	MT Div. Assoc. Union Women	798	✓	
	AAUW	797	✓	
	Legislative Chm. House Branch	798		

(Please leave prepared statement with Secretary)

"11-3214. **Qualifications of commissioners — interest in contracts not allowed — holding any political office forbidden — accepting gratuities forbidden.** Members of the commission shall be residents of the city or town and have the qualifications of electors. Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality, *and shall not hold any partisan political office or employment.* Any commissioner who shall cease to possess any of the qualifications herein required, shall forthwith forfeit his office, and any such contract in which any member is or may be interested, may be declared void by the commission.

No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass or service directly or indirectly, from any person, firm or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firemen in uniform or wearing their official badges, where the same is provided by ordinance, nor to any commissioner, nor to the city manager, nor to the city attorney, upon official business, nor to any other employee or official of said city on official business who exhibits written authority signed by the city manager."

Approved March 28, 1974

CHAPTER NO. 328

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO ABUSED, NEGLECTED AND DEPENDENT CHILDREN OR YOUTH; AND REPEALING SECTIONS 10-501 THROUGH 10-519, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 10-1300, R.C.M. 1947, which reads as follows:

10-1300. **Declaration of policy.** It is hereby declared to be the policy of the state of Montana:

- (1) to insure that all youth are afforded an adequate physical and emotional environment to promote normal development;
- (2) to compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;
- (3) to achieve these purposes in a family environment whenever possible; and
- (4) to preserve the unity and welfare of the family whenever possible.

Section 2. There is a new section to be numbered 10-1301, R.C.M. 1947, which reads as follows:

10-1301. **Definitions.** (1) "Child" or "youth," for purposes of this act, means any person under eighteen (18) years of age.

(2) "Abuse" or "neglect" means:

(a) The commission or omission of any act or acts which materially affect the normal physical or emotional development of a youth, any excessive physical injury, sexual assault or failure to thrive, taking into account the age and medical history of the youth, shall be presumptive of "material affect" and non-accidental; or

(b) The commission or omission of any act or acts by any person in the status of parent, guardian or custodian who thereby and by reason of physical or mental incapacity or other cause, refuses, or with state and private aid and assistance is unable to discharge the duties and responsibilities for proper and necessary subsistence, education, medical or any other care necessary for his physical, moral and emotional well-being.

(3) "Dependent youth" means a youth who is abandoned, dependent upon the public for support, and who is destitute or is without parents or guardian or under the care and supervision of a suitable adult or who has no proper guidance to provide for his necessary physical, moral or guardian or under the care and supervision of a suitable adult or who has no proper guidance to provide for his necessart physical, moral and emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency if the parent or parents voluntarily relinquish custody of said child.

(4) "Youth in need of care" means a youth who is depedent or is suffering from abuse or neglect within the meaning of this act.

Section 3. There is a new section to be numbered 10-1302, R.C.M. 1947, which reads as follows:

10-1302. **Jurisdiction and venue.** (1) In all matters arising under this act, the youth court shall have concurrent jurisdiction with the district courts over all youths who are within the state of Montana for any purpose, or any youth or other person subject to this act who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court, or any person who is alleged to have abused, neglected or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to section 10-1207, R.C.M. 1947.

Section 4. There is a new section to be numbered 10-1308, R.C.M. 1947, which reads as follows:

10-1308. **Confidentiality.** The case records of the department of social and rehabilitation services, its local affiliate, the county welfare department, the county attorney and the court concerning actions taken under this act shall be kept confidential unless the court determines that they should be released.

Section 5. There is a new section to be numbered 10-1309, R.C.M. 1947, which reads as follows:

10-1309. Emergency protective service. Any social worker of the department of social and rehabilitation services, the county welfare department, peace officer or county attorney who has reason to believe any youth is in immediate or apparent danger of violence or serious injury shall have the authority to immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate.

A petition shall be filed within forty-eight (48) hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

The department of social and rehabilitation services and the county welfare department shall comply with the judicial procedures set forth in section 10-1305, R.C.M. 1947.

The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

Section 6. There is a new section to be numbered 10-1310, R.C.M. 1947, which reads as follows:

10-1310. Petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect and dependency. He may require all state, county and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect or dependency, is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition shall not be a bar to criminal prosecution.

(4) The parents or parent, guardian or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least five (5) days prior to the date set for hearing; if such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) Where a parent of the child is a minor notice shall be given to the minor parent's guardian and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this act shall have the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of social and rehabilitation services, a citation shall be issued and served upon a representative of social and rehabilitation services prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect or dependency;

(b) state the full name, age and address of the youth, his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses and relationship to the youth and all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) limited legal custody;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion, or the motion of any party, appoint a guardian ad litem for the youth, or counsel for any indigent party.

(13) This section shall not apply to a petition for temporary investigative authority and protective services.

Section 7. There is a new section to be numbered 10-1311, R.C.M. 1947, which reads as follows:

10-1311. Petition and order for temporary investigative authority and protective services.

(1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney

or a social and rehabilitation services report stating in detail the facts upon which the request is based.

(4) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order:

(a) granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the state social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to immediately comply with the terms thereof or upon failure to so comply to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the state social and rehabilitation services until further order.

(e) The court may grant the following kinds of relief:

(i) right of entry by peace officer or state social and rehabilitation services worker;

(ii) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(iii) require the youth, parents, guardians or person having legal custody to receive counseling services;

(iv) place the youth in temporary medical facility or facility for protection of the youth;

(v) require the parents, guardian or other person having custody to furnish such services as the court may designate;

(vi) such other temporary disposition as may be required in the best interest of the youth.

Section 8. There is a new section to be numbered 10-1312, R.C.M. 1947, which reads as follows:

10-1312. **Hearing.** (1) In a hearing on a petition under section 10-1310, R.C.M. 1947, the court shall determine whether said youth is an abused, neglected or dependent child, and ascertain, as far as possible, the cause thereof.

(2) The court shall hear evidence regarding the residence of the child, whereabouts of the parents, guardian or nearest adult relative, the financial ability of any such parents or parent, to pay the cost of care of the child, whether or how long the child has been maintained in whole or in part by public or private charity, and may take into consideration the report of the county welfare department filed with the clerk of the court, pursuant to section 10-1313, R.C.M. 1947.

(3) In all civil and criminal proceedings relating to abuse, neglect or dependency the doctor-patient privilege and husband-wife privilege shall not apply to the extent any testimony relates to such matters.

Section 9. There is a new section to be numbered 10-1313, R.C.M. 1947, which reads as follows:

10-1313. Investigation of parents' financial ability. Whenever any petition is filed with the clerk of the district court alleging abuse, neglect or dependency, the clerk of such court shall immediately deliver to the county welfare department of the county in which the petition is filed, a copy of the petition with a notation thereon giving the day and time fixed by the court for hearing the petition. Upon receipt of such copy of petition the county welfare department shall make an investigation for the purpose of ascertaining whether the parent or parents, if any, of the child live within the county and the financial ability of such parent or parents, if any, to pay the cost of supporting the child in a foster home, and shall file with the clerk of such court, before the time fixed for the hearing, a written report of such investigation. If, upon hearing, the court finds and determines that the child has parents, or a parent, who is financially able to pay a part or the whole of such cost, and the child is ordered placed in a foster home, the court shall make an order requiring such parents, or parent, to pay such amount as the court may deem proper. A copy of the written report shall be provided to all parties to the proceeding before the time filed for hearing.

If the child is placed in a foster home, the state department of social and rehabilitation services shall pay one-half ($\frac{1}{2}$) of the cost thereof, and the county in which such child has residence shall pay the other one-half ($\frac{1}{2}$) thereof. Any amount collected from a parent or parents, when a child is placed in a foster home, shall be transmitted to the state department of social and rehabilitation services. The department shall then pay to the county one-half ($\frac{1}{2}$) of the amount so collected.

Section 10. There is a new section to be numbered 10-1314, R.C.M. 1947, which reads as follows:

10-1314. Judgment. (1) If a youth is found to be abused, neglected, or dependent, the court may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution or department it shall transmit with the dispositional judgment copies of any medical report, and such other clinical, predisposition or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected or dependent may be committed to the Montana children's center, and if the center is unable to receive the child, or if, for any other reason, it appears to be in the best interest of the child, the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of, ss:
In the District Court for the Judicial
District.

On the day of, 19...., minor
of this county, was charged on the petition of, of
county attorney of county, with being an abused or
neglected or dependent child. Upon due proof I find that it is for the best
interests of the child that he be taken from the custody of his parents,
guardian or other person having custody of him.

The names, addresses and occupations of the parents are:

Name	Address	Occupation
.....		
.....		

The child's guardian is
The child is in the custody of
It is ordered that be committed to
until discharged as provided by law.

Witness my hand this day of A.D. 19....

Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section.

Section 11. There is a new section to be numbered 10-1315, R.C.M. 1947, which reads as follows:

10-1315. **Responsibility of providing protective services.** The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this act and shall have the authority pursuant to this act to take temporary, limited or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

Section 12. There is a new section to be numbered 10-1322, R.C.M. 1947, which reads as follows:

10-1322. **Punishment of parents and other adults.** (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

Section 13. Sections 10-501 through 10-519, R.C.M. 1947, are repealed.

Section 14. Section 10-901 is renumbered section 10-1303; section 10-902 is renumbered section 10-1304; section 10-903 is renumbered section 10-1305; section 10-904 is renumbered section 10-1306; section 10-905 is renumbered section 10-1307; section 10-520 is renumbered section 10-1316; section 10-521 is renumbered section 10-1317; section 10-522 is renumbered section 10-1318; section 10-523 is renumbered section 10-1319; section 10-524 is renumbered section 10-1320; and section 10-525 is renumbered section 10-1321.

Approved March 28, 1974

CHAPTER NO. 329

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO JUVENILES AND JUVENILE COURTS; PROVIDING FOR OTHER MATTERS RELATING TO TREATMENT AND PROCEDURES CONCERNING YOUTH; AMENDING SECTIONS 10-615, 10-627, 10-628, 10-631, 10-1101, 10-1102, 10-1103, 10-1104, 10-1105, 10-1106, 10-1107, 10-1108, 10-1109, 10-1110, 10-1111, AND 94-2-109, R.C.M. 1947; AND REPEALING SECTIONS 10-601, 10-602, 10-603, 10-604.1, 10-605.1, 10-606, 10-607, 10-608, 10-608.1, 10-610, 10-611, 10-611.1, 10-612, 10-613, 10-614, 10-616, 10-617, 10-621, 10-622, 10-623, 10-624, 10-625, 10-626, 10-629, 10-630, AND 10-633.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section to be numbered 10-1201, R.C.M. 1947, which reads as follows:

10-1201. **Short title.** This act may be cited as the "Montana Youth Court Act."